

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Robert B. Chaffee
Serial No: 09/862,858
Confirmation No: 8373
Filed: May 22, 2001
For: FASTENER FOR USE WITH A FASTENING ELEMENT
AND AN INFLATABLE DEVICE FOR USE WITH THE
FASTENER

Examiner: Conley, Fredrick C.
Art Unit: 3673

CERTIFICATE OF TRANSMISSION UNDER 37 C.F.R. §1.8(a)

The undersigned hereby certifies that this document is being electronically filed in accordance with § 1.6(a)(4), on the 16th day of July, 2010.

/Robert V. Donahoe/
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Commissioner for Patents

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Sir:

Claims 1-7, 9-15, 18-34, 55, 62-73 and 75-92 are pending in this application, with claims 1, 13, 18, 62 and 79 being independent claims. Each of claims 1-7, 9-15, 18-34, 55, 62-73 and 75-92 stands finally rejected, as discussed below. In particular, each of the independent claims stands rejected under 35 U.S.C. §102 over U.S. Patent Publication No. 6,098,858 to Laugesen (hereinafter Laugesen). Applicant respectfully requests withdrawal of the rejection of each of the pending claims because there are clear deficiencies in the prima facie case in support of the rejections.

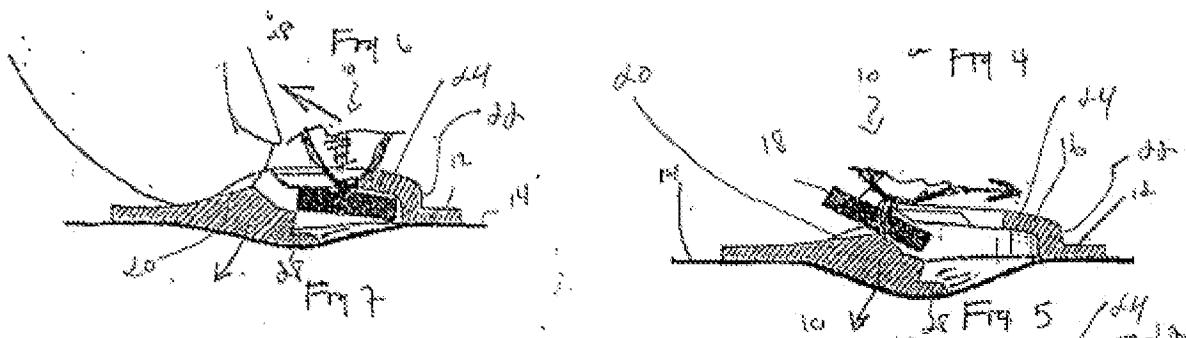
No amendments pertaining to the above-mentioned claims have been filed subsequent to the mailing of the Final office Action on January 22, 2010.

ARGUMENT

Applicant respectfully asserts that the Examiner commits clear legal error by both: 1) ignoring structure recited in the claims which is not found in the references; and 2) ignoring structure that clearly appears in the references and is disclaimed in the claims. Because of these shortcomings, Applicant respectfully requests that the panel withdraw the rejection because it contains clear errors.

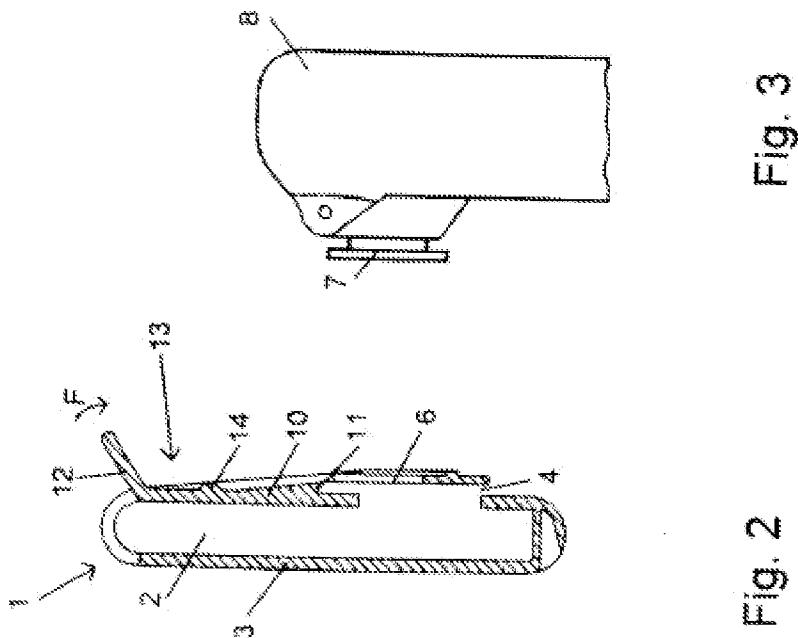
The pending independent claims are generally directed to a fastener assembly (claims 1, 13, 62 and 79) including a fastener (10) and a fastening element (18), and a fastener that retains a fastening element (claim 18). As described in detail herein, the errors concern claims, referring to independent claim 79 as one example, that recite a “fastening element” can be removed from a “housing” included in a “fastener ... **only** when the latch [also included in the fastener] is depressed **by an application of a force to a surface of the latch proximate the opening** and only by sliding the fastening element from the housing via the opening.”

Fig. 7 of the application clearly illustrates a force being applied to the surface proximate the opening by a fingertip of a user with the fastening element 18 retained in the housing 16 (see also Fig. 5, for reference characters). Further, each of independent claims 1, 13, 62 and 79 recite both a “fastener element” and a “fastener” where the fastener includes “a surface” that is “proximate the opening” in the housing, and where, the “surface” is **externally accessible or exposed “with the fastening element retained in the housing.”** Similarly, independent claim 18 recites a “fastener [10]” including a “housing [16] ... adapted to retain a fastening element [18]” and a ‘latch [20]’ comprising a “first portion” which is “**externally accessible with the fastening element retained in the housing**” and “is located adjacent an opening in the housing by which the fastening element is inserted into and removed from the housing.”



Applicant respectfully submits that the Examiner's error lies in rejecting the claims over a reference (in the case of the independent claims and the majority of the dependent claims) or references (in the case of some dependent claims) that do not describe, teach or suggest any structure that includes a fastener (including the recited housing, latch, opening and surface proximate the opening) and a fastening element where the fastening element can be removed from the housing "**only** when the latch is depressed *by an application of a force to a surface of the latch proximate the opening*" where "**the surface is externally accessible with the fastening element retained in the housing.**" As recited in each of claims 1, 13 and 62, the force is "**applied to** the surface proximate the opening" while in claim 18 the force is "**applied to** the first portion." The highlighted text in the immediately preceding quote expressly indicates: 1) that the fastener assembly is configured to allow removal of the fastening element using only one approach such that no alternatives are available to remove the fastening element from the housing during normal use; and 2) that the fastener assembly is configured such that the force must be applied to the surface. In view of the plain language of the claims and the disclosure provided by the specification and drawings, recitation of "an application of a force to" in claim 79 and a force "applied to" in each of claims 1, 13, 18 and 62 will clearly be understood by those of ordinary skill in the art to require contact with the "surface" in the case of claims 1, 13, 62 and 79 and contact with the "first portion" in the case of claim 18.

The rejections are founded on the Examiner's contention that Laugesen discloses a "latch is configured such that the fastening element can be removed from the housing only by withdrawing the fastener out the opening over the portion of the latch and only when a force [is] applied to the surface proximate the opening to flex the flexible portion." (See Final Office Action of 1/22/2010, at page 3.) Applicant contends that the Examiner's approach is based on a factual error because Laugesen expressly describes structure in the form of "a push button 12" to pivot the integral portion 13 where the push button 12 is clearly not a surface proximate an opening. In particular, Laugesen describes a holder for a cellular telephone in which a button 7 affixed at the back of the cellular phone is received in a receiving passage 5 of the holder. (See Figs. 1-3.) Laugesen states that to remove the cellular telephone 8 from the holder the "the push button 12 is pushed down which means that the integral portion 13 consisting of the resilient stop 10 and the push button 12 as a whole will pivot in the direction of the arrow F in FIG. 2." (Col. 3, lines 41-44.)



As is clearly seen in Figs. 2 and 3 of Laugesen, the push button 12 which a user employs to release the cellular telephone 8 is included in the holder 1 in a location that places the push button remote from the receiving passage 5. Because the push button 12 is located remote from the receiving passage 5, it is clearly erroneous to view an operation of the push button 12 as somehow applying a force to a "surface proximate the opening," as recited in claims 1, 13, 62 and 79 or to the "first portion" as recited in claim 18.

In addition, Laugesen also fails to describe, teach or suggest "a surface that is proximate the opening in the housing, wherein the surface is externally accessible with the fastening element retained in the housing." (Emphasis added.) Figs. 2 and 3 of Laugesen illustrate the cellular telephone 8 and the holder 1 in profile and are instructive as to this second error in the rejection of the claims. As illustrated in Figs. 2 and 3, the top of the cellular telephone and the top of the holder appear to the left. These figures illustrate that when the cellular telephone 8 is held by the holder 1 via insertion of the button 7 into the receiving passage 5, the top of the cellular telephone 8 physically blocks access to any region which is proximate the receiving passage 5, the retaining edge 11 and any portion of the resilient stop 10 adjacent the retaining edge 11. Referring to claim 79 as an example, the structure described by Laugesen prevents any "surface proximate the opening [through which the fastening element is inserted and removed from the housing]" from being "exposed" with a "fastening element retained in the housing."

Applicant also notes that the structure which is described in Laugesen includes a “torsion element 14” which provides a resistance resulting in the “pivoting of the integral portion 13” being very restricted.” (col. 3, lines 48-49.) The preceding feature results in a structure that requires that a user apply leverage to pivot the integral portion 13. Accordingly, the push button 12 protrudes away from the remainder of the holder 1. Because the only region of the holder 1 which is accessible with the cellular telephone 8 secured in the holder 1 begins in the vicinity of the torsion element 14, a user is unable access any portion in the vicinity of the receiving passage of the holder 1 that would allow the integral portion to pivot.

Thus, the Examiner’s rejection of claims 1-7, 9-15, 18-34, 55, 62-73 and 75-92 contains clear errors because Laugesen does not disclose, teach or suggest one or more limitations recited in Applicant’s claims. For at least all of the above reasons, Applicant’s claims patentably distinguish over the prior art of record. Accordingly, Applicant respectfully requests reconsideration and withdrawal of the rejection of claims 1-7, 9-15, 18-34, 55, 62-73 and 75-92.

CONCLUSION

In view of the foregoing remarks, reconsideration is respectfully requested. This application should be in condition for allowance; a notice to this effect is respectfully requested.

A fee for a three month extension of time and a notice of appeal is included herewith. If this pre-appeal brief request for review is not considered timely filed in view of the fee and if a request for an extension of time is otherwise absent, Applicant hereby requests any necessary extension of time. If there is a fee occasioned by this pre-appeal brief request for review, including an extension fee, please charge any deficiency to Deposit Account No. 50/2762, Ref. No. C0852-7013.

Respectfully submitted,
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